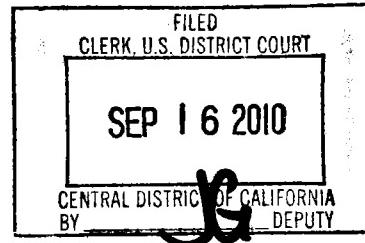


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Counsel for Plaintiffs and the Proposed Classes

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

11 EVANGELINE RED and RACHEL
12 WHITT, on Behalf of Themselves
13 and All Others Similarly Situated,

Case No: 2:10-cv-01028 GW(AGRX)
CLASS ACTION

**SECOND AMENDED COMPLAINT
FOR VIOLATIONS OF:**

UNFAIR COMPETITION LAW:

FALSE ADVERTISING LAW; AND

CONSUMER LEGAL REMEDIES ACT

DEMAND FOR JURY TRIAL

V.

17 KRAFT FOODS INC., KRAFT
18 FOODS NORTH AMERICA, and
KRAFT FOODS GLOBAL, INC.,

Defendants

1 Plaintiffs Evangeline Red and Rachel Whitt (“Plaintiffs”), on behalf of
2 themselves, all others similarly situated, and the general public, by and through
3 undersigned counsel, hereby sue Defendants Kraft Foods Inc., Kraft Foods North
4 America, and Kraft Foods Global, Inc. (collectively, “Kraft”) and, upon
5 information and belief and investigation of counsel, allege as follows:

JURISDICTION AND VENUE

7 1. This Court has original jurisdiction over this action under 28 U.S.C.
8 §1331 and 15 U.S.C. §1121.

9 2. This Court also has original jurisdiction under 28 U.S.C. §1332(d)(2)
10 (The Class Action Fairness Act) because the matter in controversy exceeds the sum
11 or value of \$5,000,000 exclusive of interest and costs and more than two-thirds of
12 the members of the Classes reside in states other than the state of which
13 Defendants are citizens.

14 3. Venue is proper in this Court pursuant to 28 U.S.C. §1331 because
15 Plaintiffs reside in and suffered injuries as a result of Defendants' acts in this
16 district, many of the acts and transactions giving rise to this action occurred in this
17 district, and Defendants (1) are authorized to conduct business in this district and
18 have intentionally availed themselves of the laws and markets of this district
19 through the promotion, marketing, distribution, and sale of their products in this
20 district; (2) reside in this district; and (3) are subject to personal jurisdiction in this
21 district.

INTRODUCTION

23 4. Plaintiffs purchased packaged food products made by Kraft during the
24 Class Period defined herein.

25 5. Kraft falsely markets Teddy Grahams, Ritz Crackers, Original
26 Premium Saltine Crackers, Honey Maid Graham Crackers, and Ginger Snaps (the
27 “Kraft PHVO Products”) as healthful despite the fact that they contain dangerous
28 levels of partially hydrogenated vegetable oil (“PHVO”), a toxic food additive

banned in many parts of the world, as well as a variety of unhealthy, highly-refined, highly-processed, and nutritionally empty ingredients.

3 6. Kraft uses various methods to falsely and misleadingly represent the
4 Kraft PHVO Products as healthy, when in fact they are unhealthy and cause a
5 number of dangerous conditions.

6 7. Plaintiffs repeatedly purchased the Kraft PHVO Products during each
7 year of the Class Period.

8 8. Absent the misstatements described herein, Plaintiffs would not have
9 purchased the Kraft PHVO Products.

10 9. Plaintiffs seek an order that compels Kraft to (1) cease marketing the
11 Kraft PHVO Products using the misleading tactics complained of herein, (2)
12 conduct a corrective advertising campaign, (3) restore the amounts by which Kraft
13 was unjustly enriched, and (4) destroy all misleading and deceptive materials and
14 products.

PARTIES

16 10. Defendant Kraft Foods Inc. is a Delaware corporation with its
17 principal place of business in California. Kraft Foods Inc. is a producer and
18 manufacturer of the Kraft PHVO Products.

19 11. Defendant Kraft Foods North America is a Delaware corporation with
20 its principle place of business in California. Kraft Foods North America is a private
21 subsidiary of Kraft Foods Inc. and a producer and manufacturer of the Kraft PHVO
22 Products.

23 12. Defendant Kraft Foods Global, Inc. is a Delaware corporation with its
24 principle place of business in California. Kraft Foods Global, Inc. is a private
25 subsidiary of Kraft Foods Inc. and a producer and manufacturer of the Kraft PHVO
26 Products.

27 13. Kraft maintains extensive operations in California, including: (1)
28 bakery and wholesale operations in San Diego; (2) tobacco leaf processing

1 facilities in Fullerton; (3) manufacturing of cookies, crackers, and bakery products,
 2 wholesale of same, in Ontario; (4) food preparation manufacturing facilities in
 3 Ontario; (5) wholesale of cookies and crackers in Los Angeles; (6) poultry
 4 processing and cheese manufacturing facilities in Tulare; (7) salted nut
 5 manufacturing facilities in Greenfield; (8) grocery wholesale in Fresno; (9) fruit
 6 juice manufacturing facilities in Fresno; (10) dried, dehydrated, salted, and roasted
 7 nut manufacturing facilities in Fresno; (11) snack chip product manufacturing
 8 facilities in Fresno; (12) storage facilities and warehouses in Fresno; (13) cookie
 9 and cracker wholesale facilities in San Jose; (14) cookie and cracker wholesale
 10 facilities in Milpitas; (15) food specialties manufacturing facilities in Livermore;
 11 and (16) food preparation and coffee manufacturing facilities in San Leandro.

12 14. Plaintiffs Evangeline Red and Rachel Whitt are residents of California
 13 who repeatedly purchased the Kraft PHVO Products during the Class Period
 14 defined herein.

15 15. Plaintiffs first discovered Kraft's unlawful acts as described herein in
 16 or about December, 2009, when Plaintiffs first learned that the Kraft PHVO
 17 Products contained PHVO and thus artificial *trans* fat and that artificial *trans* fat is
 18 extremely dangerous to human health and is associated with heart disease,
 19 diabetes, cancer, and death.

20 16. Plaintiffs, in the exercise of reasonable diligence, could not have
 21 discovered earlier Kraft's unlawful acts as described herein because the extreme
 22 dangers of artificial *trans* fats were known to Kraft, but not to Plaintiffs,
 23 throughout the Class Period as defined below.

24 17. Plaintiffs are not nutritionists, food experts, or food scientists, but
 25 rather lay consumers who did not have the specialized knowledge that Kraft had,
 26 which otherwise would have enabled them to associate partially hydrogenated oil
 27 with artificial *trans* fat, and then artificial *trans* fat with disease.

28 18. Even today the nature and extent of artificial *trans* fats—including

1 that they necessarily exist where partially hydrogenated oil is used as an ingredient
 2 in a food product—are generally unknown to the average consumer. Plaintiffs
 3 relied, during the Class Period, on Kraft's misleading health claims in deciding to
 4 purchase the Kraft PHVO Products.

5 **PARTIALLY HYRDROGENATED VEGITABLE OIL IS AN**
 6 **UNWHOLESOOME MANUFACTURED ADDITIVE THAT CAUSES**
 7 **HEART DISEASE, CHRONIC INFLAMMATION, TYPE 2 DIABETES,**
PROSTATE CANCER, BREAST CANCER AND COLORECTAL CANCER

8 19. *Trans* fat is naturally found in trace amounts in foods derived from
 9 ruminant animals, primarily in cow's milk and red meat.¹ It is also found in small
 10 quantities in human breast milk.

11 20. Also known as vaccenic acid, natural *trans* fat has never been linked
 12 to any negative health effect in human beings and is chemically different than
 13 artificial *trans* fat.

14 21. Initial studies on rats indicate that consumption of vaccenic acid is
 15 beneficial to health.²

16 22. Artificial *trans* fat, by contrast, is manufactured in an industrial
 17 process called hydrogenation, in which hydrogen atoms are added to normal
 18 vegetable oil by heating the oil to temperatures above 400 degrees Fahrenheit in
 19 the presence of ion donor catalyst metals such as rhodium, ruthenium, and nickel.³

20 23. The resulting product is known as partially hydrogenated vegetable oil
 21 ("PHVO"), which was invented in 1901 and patented in 1902 by German chemist
 22

23 ¹ Dariush Mozaffarian *et al.*, *Trans Fatty Acids and Cardiovascular Disease*, 354
 24 New Eng. J. Med. 1601, 1608 (2008).

25 ² Ye Wang *et al.*, *Trans-11 Vaccenic Acid Dietary Supplementation Induces*
 26 *Hypolipidemic Effects on JCR:LA-cp Rats*, 138 J. Nutrition 2117 (November
 2008).

27 ³ See Alice H. Lichtenstein, *Trans Fatty Acids, Plasma Lipid Levels, and Risk of*
 28 *Developing Cardiovascular Disease*, 95 Circulation 2588, 2588-90 (1997).

1 Wilhelm Normann.

2 24. PHVO is an ingredient in the Kraft PHVO Products and the main
3 source of *trans* fat in the American diet.⁴

4 25. *Trans* fat molecules in PHVO chemically differ from the natural fat
5 molecules in other food products. Natural fat, except the trace amounts of natural
6 *trans* fat from ruminant animal sources, comes in two varieties: (1) fats that lack
7 carbon double bonds (“saturated fat”) and (2) fats that have carbon double bonds
8 with the hydrogen atoms on the same side on the carbon chain (“*cis* fat”). *Trans*
9 fat, however, has double bonds on opposite sides of its carbon chain.

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Saturated fat

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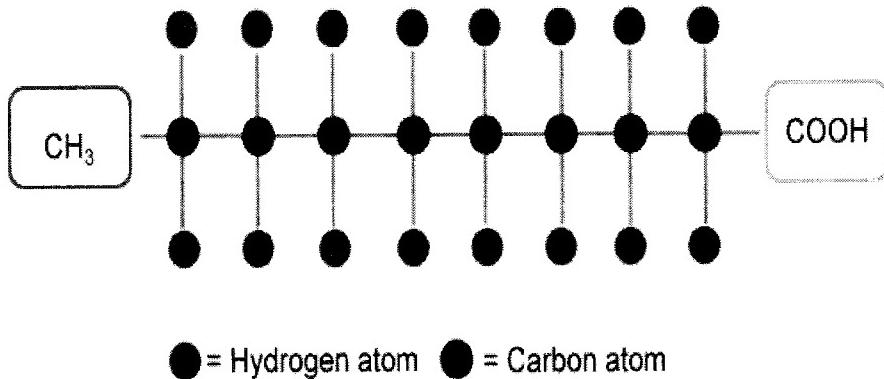
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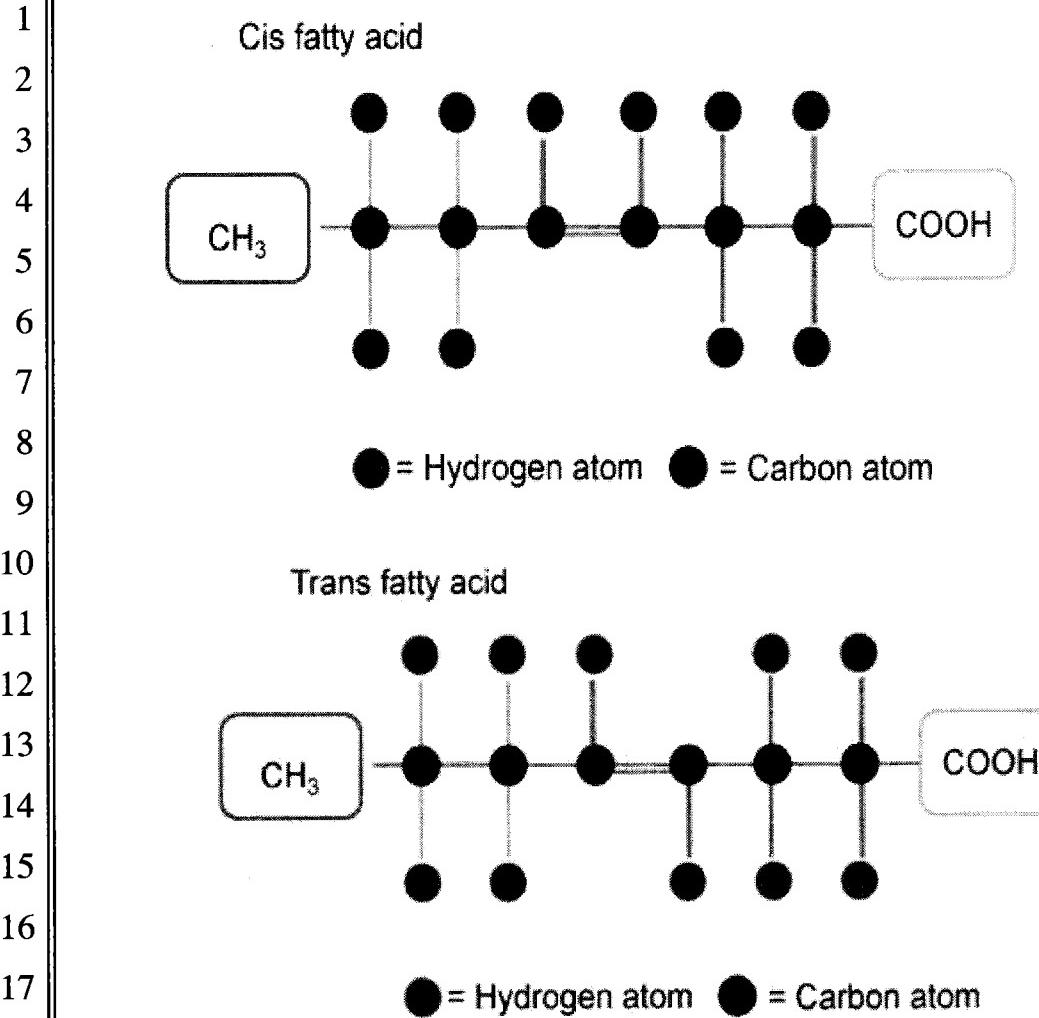
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⁴ See Mozaffarian, 354 New Eng. J. Med. at 1608.



19 26. PHVO was initially a "wonder product" attractive to the packaged
 20 food industry because it combines the low cost of unsaturated *cis* fat with the
 21 flexibility and long shelf life of saturated fat. Like *cis* fat, PHVO is manufactured
 22 from lower-cost legumes,⁵ while saturated fat is derived from relatively expensive
 23 animal and tropical plant sources.⁶ Like natural saturated fat, PHVO has a long
 24 shelf life, physical solidity, and flavor stability.

25 27. The industrial process that adds hydrogen ions to normal vegetable oil

26

27 ⁵ e.g., corn oil, soybean oil, peanut oil

28 ⁶ e.g., butter, cream, tallow, palm oil, coconut oil

1 improves food texture and permits food products to withstand heavy processing
 2 and high temperatures.⁷ Given its versatility, PHVO was recently used in 40
 3 percent of processed packaged foods.⁸

4 28. While many manufacturers have removed PHVO from their products
 5 as its extreme damage to human health has become ever clearer, Kraft has chosen
 6 to continue its use.

7 29. PHVO and artificial *trans* fat do not exist in nature, and the human
 8 body has not evolved to digest them.

9 30. The same unusual and unnatural chemical structure that gives PHVO
 10 properties attractive from an industrial perspective makes it highly toxic to human
 11 health.

12 **PHVO causes cardiovascular disease, type 2 diabetes, and cancer.**

13 • **Cardiovasuclar Disease**

14 31. In a joint Dietary Guidelines Advisory Committee Report, the U.S.
 15 Department of Health and Human Services and the U.S. Department of Agriculture
 16 recognized “[t]he relationship between *trans* fatty acid intake and LDL
 17 cholesterol is direct and progressive, increasing the risk of cardiovascular
 18 disease.”⁹

19 32. Food products with artificial *trans* fat harm the heart by “rais[ing] the
 20 concentration of the most dangerous form of serum cholesterol (LDL cholesterol)”

21 ⁷ See Alberto Ascherio *et al.*, *Trans Fatty Acids & Coronary Heart Disease*, 340
 22 New Eng. J. Med. 94, 94-8 (1999). See also Ctr. for Food Safety & Applied
 23 Nutrition, U.S. Food & Drug Admin., Questions & Answers About *Trans Fat*
 24 Nutrition Labeling (Update 2006) (2003), available at
<http://www.cfsan.fda.gov/%7Edms/qatrans2.html#fn>.

25 ⁸ Mary Carmichael, *The Skinny on Bad Fat*, Newsweek, Dec. 1, 2003, at 66. See
 26 also Kim Severson, *Hidden Killer. It's *Trans* Fat. It's Dangerous. And It's In*
Food You Eat Every Day, S.F. Chron., Jan. 30, 2002.

27 ⁹ Dep't of Health & Human Serv. & U.S. Dep't of Agric., 2005 Dietary Guidelines
 28 Advisory Committee Report, Section 10 (2005).

1 and “lower[ing] a protective form of serum cholesterol (HDL cholesterol).”¹⁰

2 33. The American Heart Association notes “***trans fats raise your bad***
 3 ***(LDL) cholesterol levels and lower your good (HDL) cholesterol levels. Eating***
 4 ***trans fats increases your risk of developing heart disease.***¹¹

5 34. After an extensive evaluation of the scientific literature on the *trans*
 6 fat/CHD connection, the FDA concluded:

7 [B]ased on the consistent results across a number of the most
 8 persuasive types of study designs (i.e., intervention trials and
 9 prospective cohort studies) that were conducted using a range of test
 10 conditions and across different geographical regions and populations .
 11 . . the available evidence for an adverse relationship between *trans* fat
 12 intake and CHD risk is strong.¹²

13 35. *Trans* fat raises the risk of CHD more than any other known nutritive
 14 product.¹³

15 36. Removing 2% of daily calories from *trans* fat from the American diet
 16 “would prevent approximately 30,000 premature coronary deaths per year, and
 17 epidemiologic evidence suggests this number is closer to 100,0000 premature
 18 deaths annually.”¹⁴

19 37. A study on the impact of *trans* fatty acids on heart health provides
 20 evidence that:

21 [E]ven the lower estimates from the effects [of PHVO] on blood lipids
 22 would suggest that more than 30,000 deaths per year may be due to

22¹⁰ *Id.*

23¹¹ Am. Heart Ass’n., *Trans Fat Overview*, available at
 24 <http://www.americanheart.org/presenter.jhtml?identifier=3045792>.

25¹² Ctr. for Food Safety & Applied Nutrition, U.S. Food & Drug Admin., Questions
 26 & Answers About *Trans* Fat Nutrition Labeling.

27¹³ Mozaffarian, 354 New Eng. J. Med. at 1603.

28¹⁴ Alberto Ascherio *et al.*, *Trans Fatty Acids & Coronary Heart Disease*, 340 New
 29 Eng. J. Med. 94, 94-8 (1999).

1 the consumption of partially hydrogenated vegetable fat. Furthermore,
 2 the number of attributable cases of nonfatal coronary heart disease
 3 will be even larger.¹⁵

4 38. Since “the adverse effect of *trans* fatty acids is stronger than that of
 5 saturated fatty acids,” saturated fat consumption would need to be reduced by 10
 6 percent of caloric intake to have the same impact.¹⁶

7 39. “10 to 19 percent of CHD events in the United States could be averted
 8 by reducing the intake of *trans* fat.”¹⁷

9 40. By raising LDL levels and lowering HDL levels, *trans* fat causes a
 10 wide variety of dangerous heart conditions, including low flow-mediated
 11 vasodilation, coronary artery disease, and primary cardiac arrest.

12 41. After conducting a crossover diet trial, Danish researchers determined
 13 that healthy men and women who maintained a high-*trans* fat diet had 21 percent
 14 lower protective HDL levels and 29 percent lower flow-mediated vasodilation
 15 (“FMD”) than those on a high-saturated fat diet. Since FMD measures the percent
 16 increase between the diameter of the artery at ordinary and at maximum dilation,
 17 low FMD is “a risk marker of coronary heart disease.”¹⁸

18 42. Australian researchers observed that heart attack patients possess
 19 elevated amounts of *trans* fat in their adipose tissue, strongly linking heart disease

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 22 ¹⁵ W.C. Willett *et al.*, *Trans Fatty Acids: Are the Effects only Marginal?* 84 Am. J.
 23 Pub. Health 722, 723 (1994).

24 ¹⁶ Mozaffarian, 354 New Eng. J. Med. at 1609.

25 ¹⁷ See Mozaffarian, 354 New Eng. J. Med. at 1611.

26 ¹⁸ Nicole M. De Roos *et al.*, *Replacement of Dietary Saturated Fatty Acids by*
 27 *Trans Fatty Acids Lowers Serum HDL Cholesterol and Impairs Endothelial*
 28 *Function in Healthy Men and Women*, 21 Am. Heart Assoc. 1233, 1233-37
 (2001).

1 with long-term consumption of *trans* fat.¹⁹

2 43. By taking blood samples from 179 survivors of cardiac arrest and 285
 3 randomly-selected control hospital patients and comparing the top fifth with the
 4 bottom fifth of participants by *trans* fat intake, another study published in the
 5 American Heart Association's peer-reviewed journal *Circulation* found that the
 6 largest consumers of *trans* fat have three times the risk of suffering primary cardiac
 7 arrest, even after controlling for medical and lifestyle risk factors.²⁰

8 • Type 2 Diabetes

9 44. Artificial *trans* fat causes type 2 diabetes.²¹

10 45. In particular, *trans* fat disrupts the body's glucose and insulin
 11 regulation system by incorporating itself into cell membranes, causing the insulin
 12 receptors on cell walls to malfunction, and in turn elevating blood glucose levels
 13 and stimulating further release of insulin.

14 46. Researchers at Northwestern University's medical school found mice
 15 show multiple markers of type 2 diabetes after eating a *trans* fat diet for only four
 16 weeks. By the eighth week of the study, mice fed the diet high in trans fat showed
 17 a 500% increase compared to the control group in hepatic interleukin-1 β gene
 18 expression, one such marker of diabetes, indicating the extreme stress artificial
 19 *trans* fat places on the body.²²

20
 21 ¹⁹ Peter M. Clifton *et al.*, *Trans Fatty Acids In Adipose Tissue And The Food Supply Are Associated With Myocardial Infarction*. 134 J. of Nutrition 874, 874-79 (2004).

22 ²⁰ Rozenn N. Lemaitre *et al.*, *Cell Membrane Trans-Fatty Acids and the Risk of Primary Cardiac Arrest*, 105 Circulation 697, 697-701 (2002).

23 ²¹ Am. Heart Ass'n., *Trans Fat Overview*.

24 ²² Sean W. P. Koppe *et al.*, *Trans fat feeding results in higher serum alanine aminotransferase and increased insulin resistance compared with a standard murine high-fat diet*, 297 Am. J. Physiol. Gastrointest Liver Physiol. G378-84 (2009).

1 47. A 14-year study of 84,204 women found that for every 2 percent
 2 increase in energy intake from artificial *trans* fat, the relative risk of type 2
 3 diabetes was 1.39. In other words, each 2 percent of calories from artificial *trans*
 4 fat increases the risk of type 2 diabetes by 39 percent.²³

5 • **Breast Cancer, Prostate Cancer, Colorectal Cancer**

6 48. *Trans* fat is a known carcinogen shown to cause breast, prostate, and
 7 colorectal cancer.

8 49. A 13-year study of 19,934 French women showed 75 percent more
 9 women contracted breast cancer in the highest quintile of *trans* fat consumption
 10 than did those in the lowest.²⁴

11 50. In a 25-year study of 14,916 U.S. physicians, the participants with the
 12 highest quintile of *trans* fat intake had over a 100% greater risk of developing
 13 prostate cancer than the doctors in the lowest quintile.²⁵

14 51. A study of 1,012 American males observing *trans* fat intake and the
 15 risk of prostate cancer found “[c]ompared with the lowest quartile of total trans-
 16 fatty acid consumption, the higher quartiles gave odds ratios (ORs) equal to 1.58,”
 17 meaning those in the highest quartile are 58% more likely to contract prostate
 18 cancer than those in the lowest.²⁶

19 52. A 600-person study found an 86 percent greater risk of colorectal

21 ²³ Jorge Salmeron *et al.*, *Dietary Fat Intake and Risk of Type 2 Diabetes in Women*,
 22 73 Am. J. of Clinical Nutrition 1019, 1023 (2001).

23 ²⁴ Véronique Chajès *et al.*, *Association between Serum Trans-Monounsaturated*
Fatty Acids and Breast Cancer Risk in the E3N-EPIC Study. 167 Am. J. of
 24 Epidemiology 1312, 1316 (2008).

25 ²⁵ Jorge Chavarro *et al.*, *A Prospective Study of Blood Trans Fatty Acid Levels and*
Risk of Prostate Cancer. , 47 Proc. Am. Assoc. of Cancer Research 95, 99 (2006).

26 ²⁶ Xin Liu *et al.*, *Trans-Fatty Acid Intake and Increased Risk of Advanced Prostate*
Cancer: Modification by RNASEL R462Q Variant, 28 Carcinogenesis 1232, 1232
 28 (2007).

1 cancer in the highest *trans* fat consumption quartile than in the lowest.²⁷

2 53. A 2,910-person study found “trans-monounsaturated fatty
3 acids...were dose-dependently associated with colorectal cancer risk,” which
4 showed “the importance of type of fat in the etiology and prevention of colorectal
5 cancer.”²⁸

6 54. The serious health conditions caused by *trans* fat consumption only
7 occur from artificial *trans* fat, found only in PHVO, not the trace natural *trans* fat
8 found in ruminant sources:

9 Of four prospective studies evaluating the relation between the intake
10 of *trans* fatty acids from ruminants and the risk of CHD, none
11 identified a significant positive association, whereas three identified
12 nonsignificant trends toward an inverse association. . . . [T]he sum of
13 the current evidence suggests that the public health implications of
14 consuming *trans* fats from ruminant products are relatively limited.²⁹

14 **The grave, concrete risks of PHVO consumption far outweigh any conceivable**
15 **benefits of Kraft’s conduct.**

16 55. There is no health benefit to artificial *trans* fat consumption and “no
17 safe level” of artificial *trans* fat intake.³⁰

18 56. According to the established consensus of the scientific community,

22 ²⁷ L.C. Vinikoor *et al.*, *Consumption of Trans-Fatty Acid and its Association with*
23 *Colorectal Adenomas*, 168 Am. J. of Epidemiology 289, 294 (2008).

24 ²⁸ Evropi Theodoratou *et al.*, *Dietary Fatty Acids and Colorectal Cancer: A Case-*
25 *Control Study*, 166 Am. J. of Epidemiology 181 (2007).

26 ²⁹ Mozaffarian, 354 New Eng. J. Med. at 1608-1609.

27 ³⁰ Food & Nutrition Bd., Inst. of Med., *Dietary Reference Intakes For Energy,*
28 *Carbohydrate, Fiber, Fat, Fatty Acids, Cholesterol, Protein, and Amino Acids*
(2005).

1 consumers should keep their consumption of *trans* fat “as low as possible.”³¹

2 57. As Dariush Mozaffarian, M.D., notes in the New England Journal of
3 Medicine:

4 [T]rans fats from partially hydrogenated oils have no intrinsic health
5 value above their caloric value. Thus, from a nutritional standpoint,
6 the consumption *trans* fatty acids results in considerable potential
7 harm but no apparent benefit. . . . Thus, complete or near-complete
8 avoidance of industrially produced *trans* fat—a consumption of less
9 than 0.5 percent of the total energy intake—may be necessary to avoid
adverse effects and would be prudent to minimize health risks.³²

10 **Trans fat is so inherently dangerous that it is being banned in an increasing
number of American states and European countries.**

11 58. In 2008, California became the first state to ban restaurant food with
12 artificial *trans* fat, a law affecting approximately 88,000 eating establishments.
13 *Trans* fats are now banned in restaurants as of January 1, 2010 and on January 1,
14 2011 will be phased out of retailers.

15 59. New York City banned all *trans* fat in its 20,000 food establishments
16 in 2006. Similar laws exist in Philadelphia; Baltimore; Stamford, Connecticut; and
17 Montgomery County, Maryland.

18 60. A 2004 Danish law restricted all foods to under 2 percent of calories
19 from *trans* fat. Switzerland made the same restriction in 2008.³³

20 61. After conducting a surveillance study of Denmark’s *trans* fat ban,
21 researchers concluded the change “did not appreciably affect the quality, cost or
22

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24 ³¹ Food & Nutrition Bd., Inst. of Med., Dietary Reference Intakes For Energy,
25 Carbohydrate, Fiber, Fat, Fatty Acids, Cholesterol, Protein, and Amino Acids 424
(2005).

26 ³² Mozaffarian, 354 New Eng. J. Med. at 1609.

27 ³³ Andrew Collier, *Deadly Fats: Why Are We still Eating Them?*, The Independent
28 (UK), June 10, 2008.

1 availability of food" and did not have "any noticeable effect for the consumers."³⁴

2 62. In 2006, a *trans* fat task force co-chaired by Health Canada and the
3 Heart and Stroke Foundation of Canada recommended capping *trans* fat content at
4 2 percent of calories for tub margarines and spreads and 5 percent for all other
5 foods. On September 30, 2009, British Columbia became the first province to
6 impose these rules on all restaurants, schools, hospitals, and special events.³⁵

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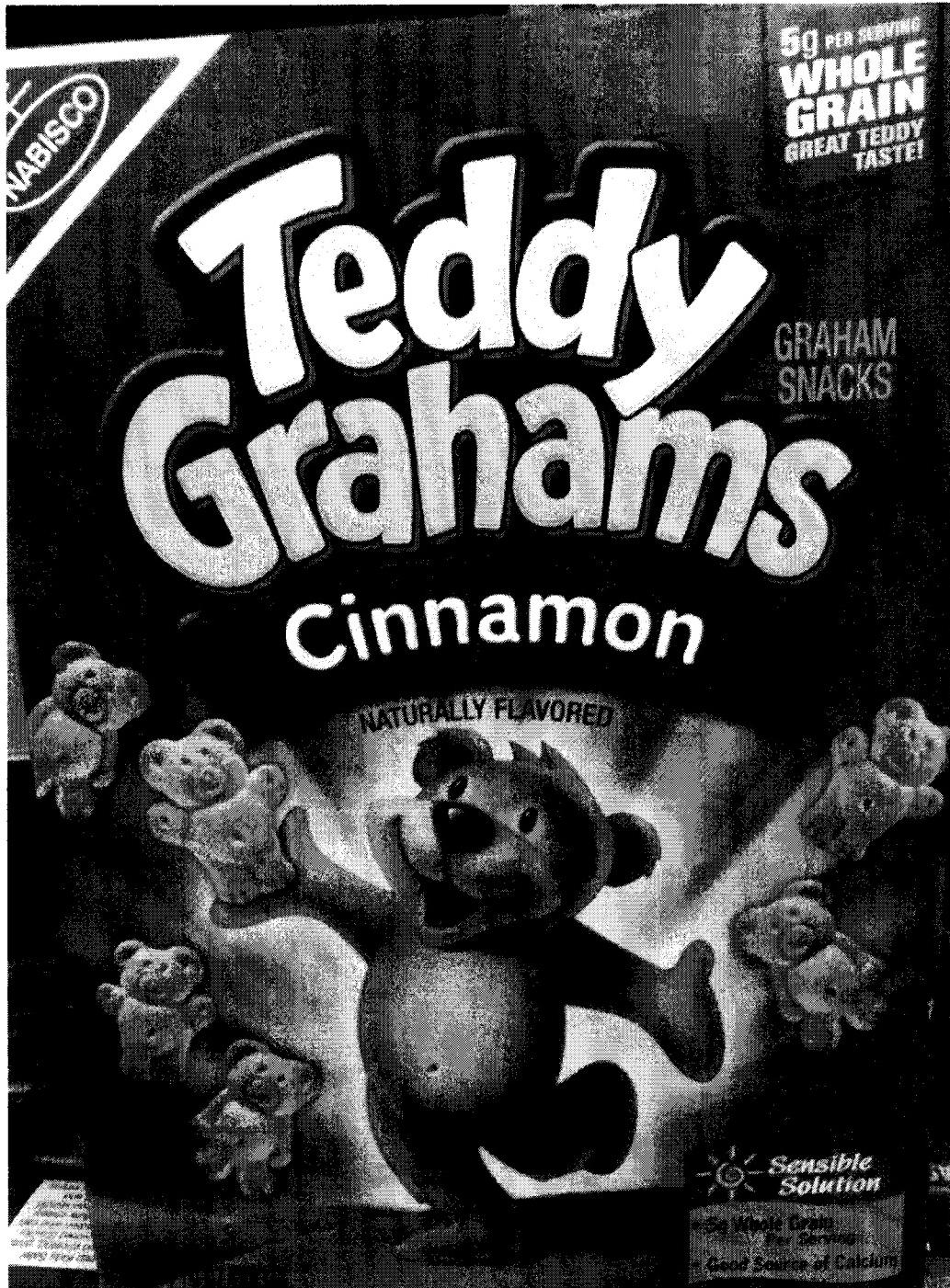
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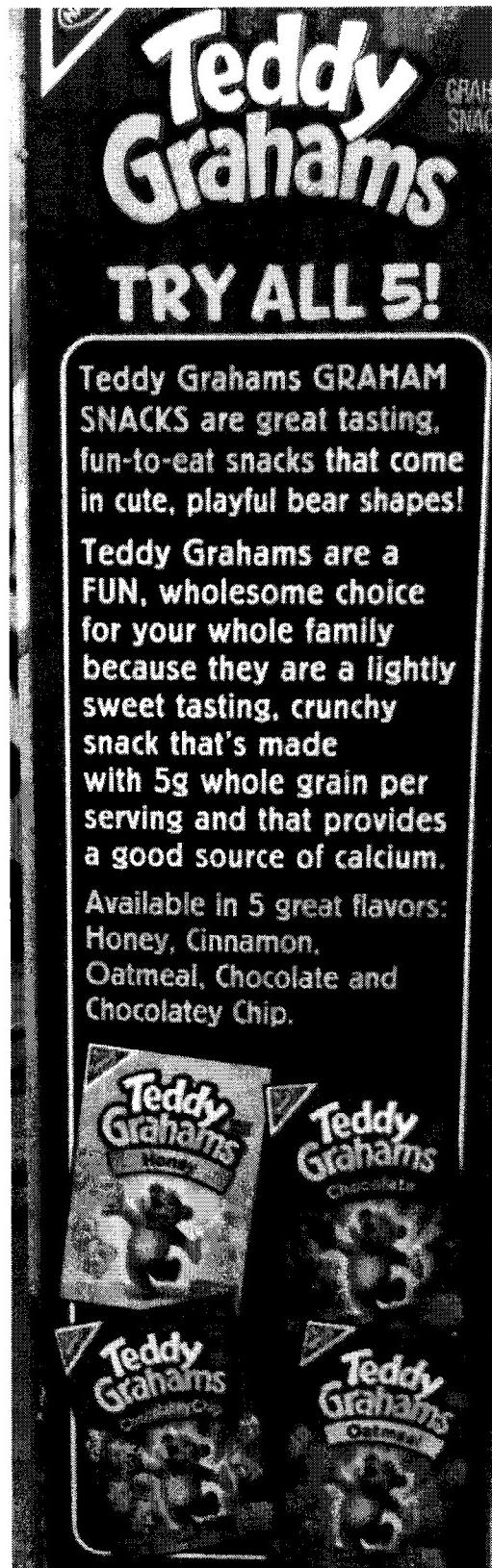
³⁴ Mozaffarian, 354 New Eng. J. Med. at 1610; *see also* High Levels of Industrially Produced *Trans* Fat in Popular Fast Food, 354 New Eng. J. Med. 1650, 1652 (2006).

³⁵ *Province Restricts Trans Fat in B.C.*, British Columbia Ministry of Healthy Living and Sport Press Release (2009), available at http://www2.news.gov.bc.ca/news_releases_2005-2009/2009HLS0013-000315.htm.

SPECIFIC MISREPRESENTTIONS

Teddy Grahams



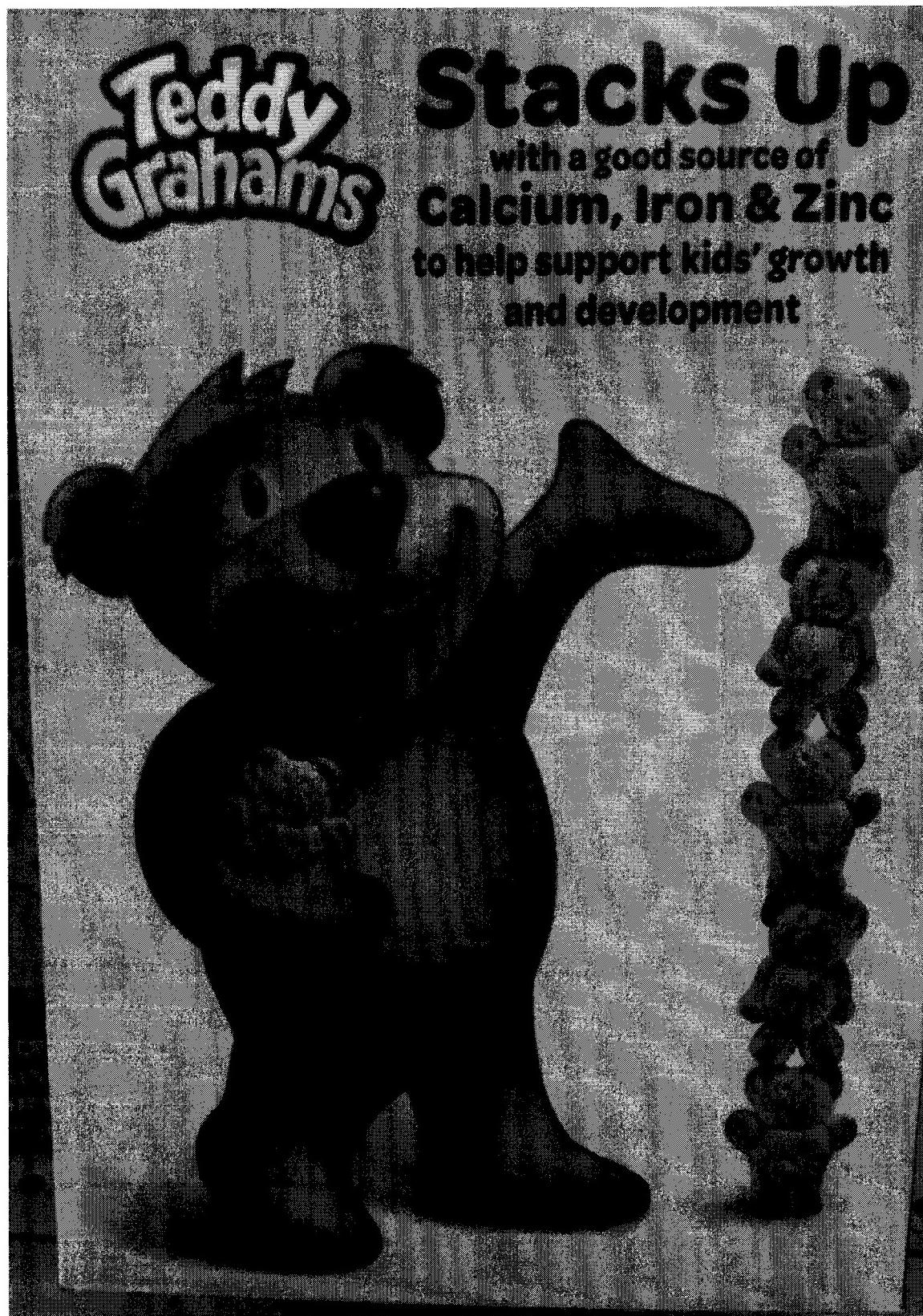




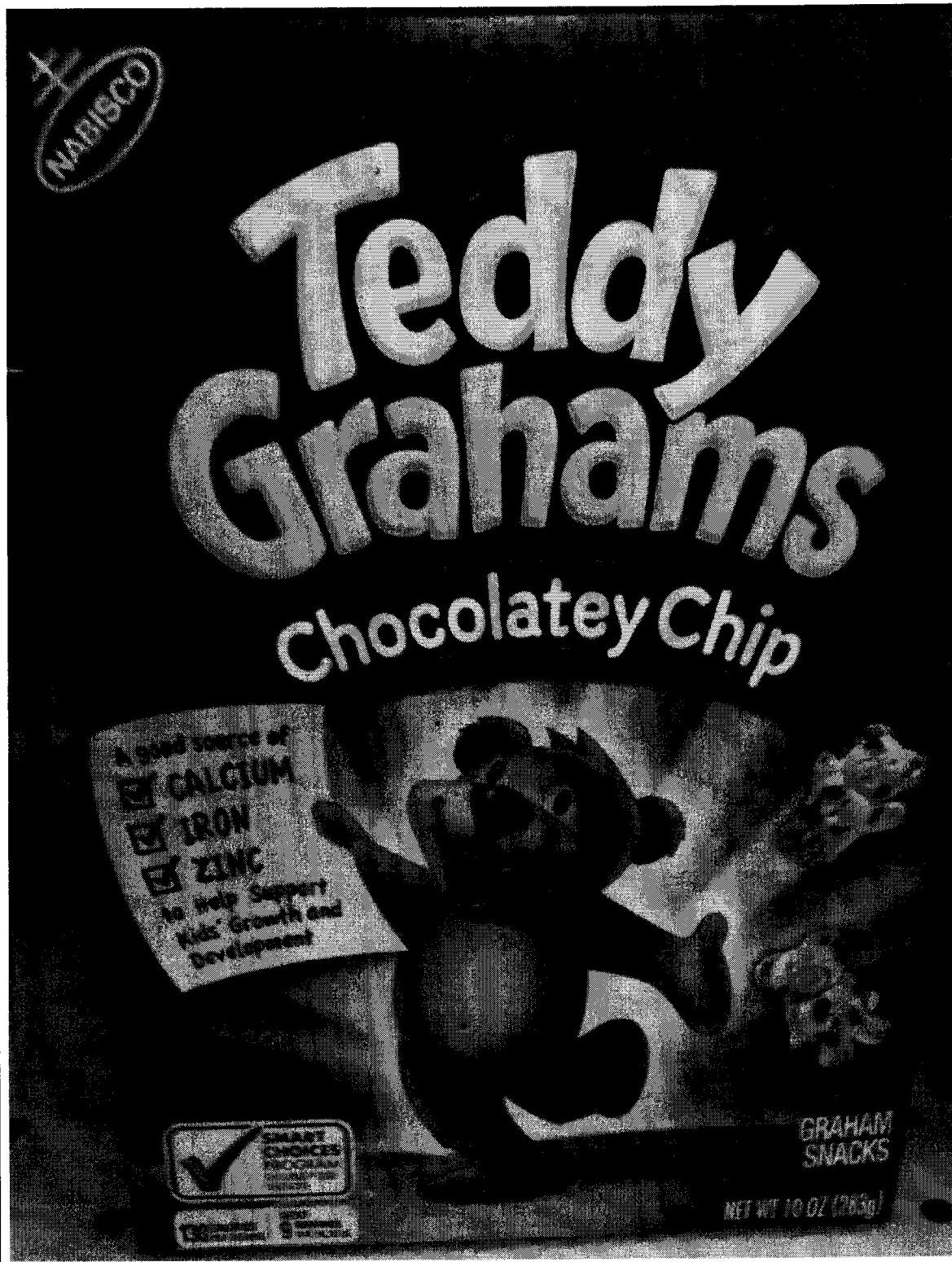
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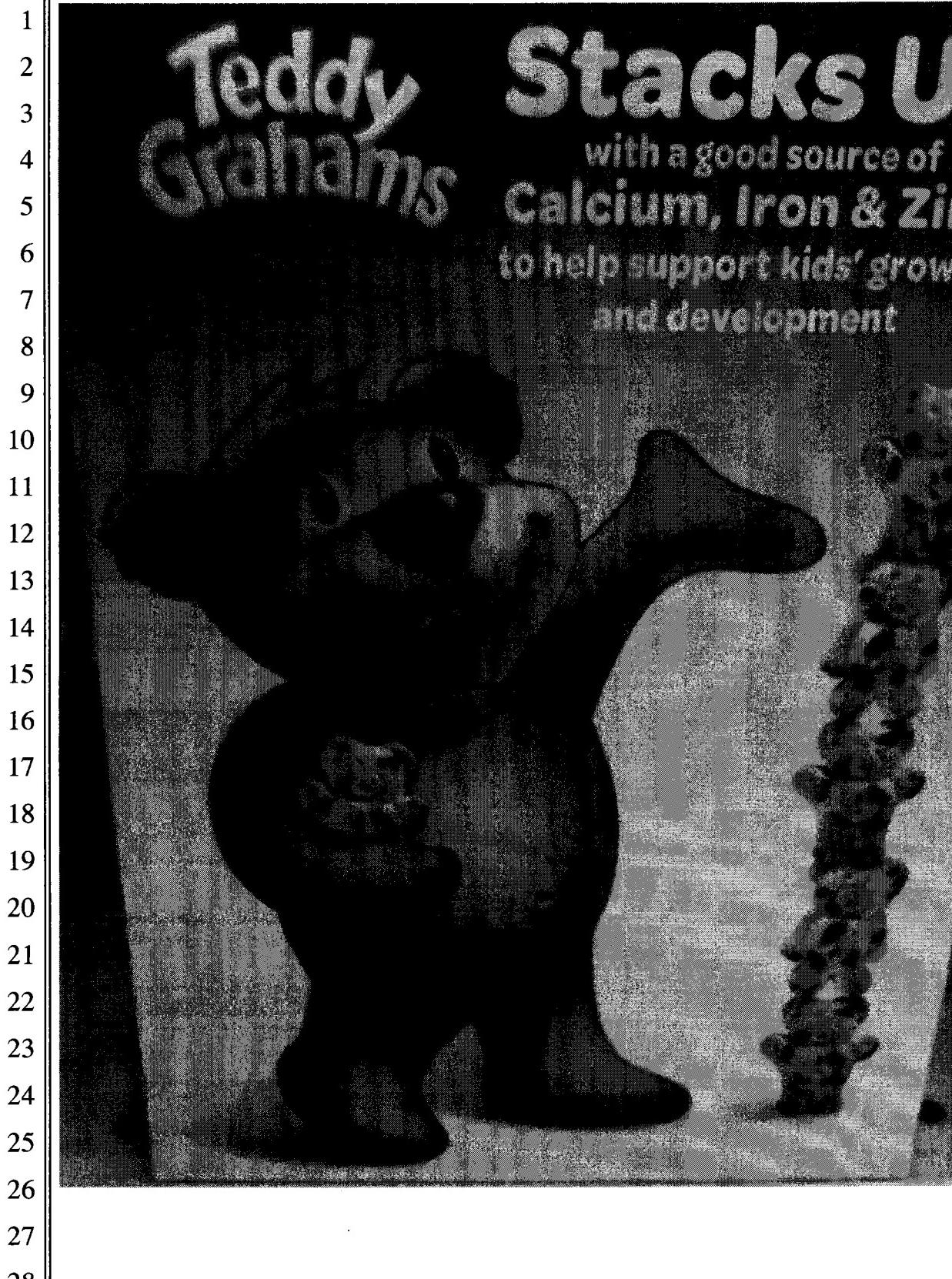


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1 63. **Misleading “Graham” Claim:** Both the product name and the
 2 package of Teddy Grahams claim it is a graham product. This is not true. Graham
 3 products, such as graham cookies, crackers, and pie crusts, are by definition made
 4 from graham flour.

5 64. Graham flour, invented in the United States in 1824, is a healthier
 6 alternative for baking than the heavily refined white flour, which is the primary
 7 ingredient in Teddy Grahams. Graham flour has several very substantial nutritional
 8 advantages over white flour. Graham flour utilizes the entire wheat grain, which
 9 means that the bran and germ is not removed from the wheat kernel as in white
 10 flour. This results in a lower percentage of nutritionally empty starch and a much
 11 higher amount of fiber and protein compared to white flour. Graham flour also
 12 differs from white flour in that it is coarser and less refined. These two differences
 13 mean baked goods made with graham flour are substantially better for health than
 14 products made with white flour like Teddy Grahams.

15 65. The highly-refined white flour that is the major ingredient in Teddy
 16 Grahams has a very high glycemic index, meaning that almost immediately upon
 17 consumption it is digested into simple sugar and released into the blood stream.
 18 High levels of blood sugar are toxic to a number of organs, so the body then
 19 releases the hormone insulin as a response to reduce blood sugar to a safe level.
 20 When this process is repeated over time, cells that normally react to insulin and
 21 absorb excess blood sugar become sensitized and partially resistant to insulin. This
 22 partial insulin resistance is variously referred to as metabolic syndrome, insulin
 23 resistance syndrome, and pre-diabetes. Type 2 diabetes eventually results. Graham
 24 flour products, because they are less refined and contain fiber and protein, are more
 25 slowly digested and do not cause the same sudden spike in blood glucose and
 26 insulin levels as white flour products like Teddy Grahams.

27 66. Besides their relative effects on blood sugar and metabolic health,
 28 graham flour based products are also healthier because of their higher fiber

1 content. Fiber is important to aid digestion and a lack of fiber in the diet is linked
 2 with cancer of the digestive tract.³⁶ Products with natural fiber are also subjectively
 3 more satisfying and “filling” and less likely to be consumed in excess.³⁷ A low
 4 fiber diet in children is linked to obesity, constipation,³⁸ and irritated mood.³⁹

5 67. Plaintiffs and the public generally are aware that graham products are
 6 healthier than white flour products. Teddy Grahams, however, contain more than
 7 three times the amount of white flour as graham flour. It is therefore false and
 8 misleading to describe Teddy Grahams as “Grahams” or “graham snacks.” Graham
 9 products are made entirely or primarily from graham flour.

10 68. **False and Misleading “Wholesome” Claim:** Kraft labels Teddy
 11 Grahams “A fun, wholesome choice for your whole family.” In fact, far from
 12 wholesome, Teddy Grahams is made from PHVO, a toxic ingredient that will
 13 cause death and disease for many of those who regularly consume it.

14 69. Teddy Grahams is also not “wholesome” because it is made with
 15 highly-refined white flour.

16 70. Teddy Grahams is also not “wholesome” because it contains a very
 17 large amount of highly-refined added sugar. Paired with the product’s refined
 18 white flour, this added sugar gives Teddy Grahams a high glycemic index that
 19 promotes insulin resistance, metabolic dysfunction, diabetes, childhood obesity,

20 ³⁶ Mayo Clinic, “Colon Cancer: Risk Factors,” Aug. 12, 2009, *available at*
 21 <http://www.mayoclinic.com/health/colon-cancer/DS00035/DSECTION=risk-factors>

22 ³⁷ *Id.*, “Dietary Fiber: Essential for a healthy diet,” Nov. 19, 2009, *available at*
 23 <http://www.mayoclinic.com/health/fiber/NU00033>

24 ³⁸ *Id.*, “Constipation in Children: Causes,” May 2, 2009, *available at*
 25 <http://www.mayoclinic.com/health/constipation-in-children/DS01138/DSECTION=causes>

26 ³⁹ *Id.*, “Constipation in children: Symptoms,” May 2, 2009, *available at*
 27 <http://www.mayoclinic.com/health/constipation-in-children/DS01138/DSECTION=symptoms>

1 and heart disease.

2 71. More immediately, the high sugar and refined simple starch content
 3 leads children who consume Teddy Grahams to experience a sugar “high,” during
 4 which they will tend to be hyperactive, and a subsequent “crash” or “low,” during
 5 which they will be tired, moody, irritable, and even depressed.

6 72. Teddy Grahams are also not “wholesome” because of their low fiber
 7 content. If Teddy Grahams were made primarily from graham rather than white
 8 flour, they would be approximately four times higher in fiber. Highly-refined foods
 9 low in fiber, like Teddy Grahams, cause low mood and constipation in the short
 10 term and eventually lead to colorectal cancer over time.

11 73. **Misleading “support kids’ growth and development” Claim:** Kraft
 12 misleads consumers into believing that Teddy Grahams products are healthy by
 13 stating that they “support kids’ growth and development.” These statements are
 14 deceptive in intent and nature: the product contains PHVO, which damages a
 15 child’s development, including brain development, and implies that Teddy
 16 Grahams are healthy when in fact they contain a product that causes CHD, cancer,
 17 and diabetes.

18 74. Teddy Grahams does not “support kids’ health and development”
 19 because it is composed primarily of highly-refined sugar and simple starches that
 20 are digested immediately into sugar. In fact, growth and development do not
 21 require such nutritionally empty sugar and refined starch, but protein and a mix of
 22 natural fats. If Teddy Grahams were made from graham flour rather than
 23 unbleached white flour, it would have a lower amount of simple starches and a
 24 higher content of natural wheat fat (including omega-3 fatty acids) and protein.
 25 Natural wheat fat and protein are found in the germ of the wheat, which is removed
 26 during the refining process from the unbleached white flour used in Teddy
 27 Grahams, but not removed from graham flour.

28 75. The wheat germ Kraft removes from the flour used in Teddy Grahams

1 contains a healthy quantity of folate, niacin, thiamin, vitamin B6, calcium, iron,
 2 magnesium, manganese, omega-3 fatty acids, phosphorous, potassium, selenium,
 3 vitamin E, and zinc. After removing these *fourteen* nutrients from the flour used in
 4 Teddy Grahams, Kraft then adds back just *three* of them: calcium, iron, and zinc.
 5 While such enrichment modestly improves an unwholesome, unhealthy product, it
 6 still leaves Teddy Grahams nutritionally unbalanced and unable to support growth
 7 and development.

8 **76. False and Misleading “Smart Choices” Claims:** Kraft labels Teddy
 9 Grahams “Smart Choices Program / Grading Food Choices.” Regardless of what
 10 Kraft claims it intended “Smart Choices Program” to mean, its prominent labeling
 11 leads reasonable consumers to believe that the product within the packaging is a
 12 “smart choice” for their diet. Teddy Grahams products, however, are far from a
 13 “smart choice,” as their consumption will cause heart disease, cancer, obesity,
 14 mood swings, and diabetes in the children that consume them.

15 77. The clear implication of the large light green check mark next to the
 16 phrases “Smart Choices Program” and “Grading Food Choices” is that the product
 17 has been evaluated and “grade[d]” together with other products, and is in
 18 comparison a “Smart Choice.” Such implication is false and misleading.

19 78. Moreover, the Smart Choices program itself is highly misleading, and
 20 is wielded by Kraft to deceive consumers.

21 79. The Smart Choices Program is an industry-funded initiative created
 22 by a coalition of market giants including Kraft, Kellogg’s, General Mills, Unilever,
 23 ConAgra, Tyson Foods, and PepsiCo. Products that have received the “Smart
 24 Choices” checkmark include Froot Loops, Lucky Charms, Cocoa Crispies, Ritz
 25 Bitz Peanut Butter Chocolatey Blast Crackers, mayonnaise, and Fudgesicles. Froot
 26 Loops contains 41% sugar by weight—more than many popular brands of cookies.

27 80. Walter Willett, chair of the nutrition department at the Harvard School
 28 of Public Health, called Smart Choice’s criteria “seriously flawed,” and “not

1 credible.”⁴⁰ New York University nutrition professor Marion Nestle said, “[t]he
 2 object of this is to make highly-processed foods appear as healthful as unprocessed
 3 foods, which they are not.” *Id.* Michael Jacobson, executive director of the Center
 4 for Science in the Public Interest, was previously part of the Smart Choices panel
 5 responsible for devising nutritional criteria, but quit because it was dominated by
 6 members of the food industry, which skewed the panel’s decisions. *Id.* Those
 7 criteria, for example, designate as a “Smart Choice” frozen meals and sandwiches
 8 containing 600 milligrams of sodium, a quarter of the recommended daily
 9 maximum intake. *Id.*

10 81. So dubious is the Smart Choices program that Connecticut’s Attorney
 11 General initiated an investigation into whether it represents a form of consumer
 12 deception in September, 2009, calling the program “nutritionally suspect.”⁴¹ In the
 13 light of extensive criticism and following a letter from the FDA, Smart Choices
 14 *voluntarily suspended its program on October 23, 2009.* Following that
 15 suspension, PepsiCo cut ties with the program and Kellogg’s announced it would
 16 phase out packaging bearing the Smart Choices label. But Kraft has kept the Smart
 17 Choice label, continuing to deceive consumers.

18 82. **False and Misleading Healthy and Nutritious Food Packaging:**
 19 Each of the label items described above individually, and especially when taken
 20 together, convey the false and misleading that Teddy Grahams is a healthy and
 21 nutritious food. For the reasons described above, this is false and misleading.

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⁴⁰ William Neuman, *For Your Health, Froot Loops*, N.Y. Times, September 4, 2009, available at <http://www.nytimes.com/2009/09/05/business/05smart.html>.

⁴¹ See Connecticut Attorney General’s Office Press Release, dated October 20, 2009, available at <http://www.ct.gov/ag/cwp/view.asp?Q=449216&A=3673>.

Vegetable Thins



23 83. **Misleading Packaging:** The front label of Vegetable Thins shows
24 images of vegetables and advertises that Vegetable Thins are “Made With Real
25 Vegetables.” This statement is misleading because Vegetable Thins contain
26 virtually no carrots, tomatoes, onions, or red bell peppers. In addition, Vegetable
27 Thins contain more partially hydrogenated vegetable oil than all the pictured
28 vegetables on the label combined.

1 84. The totality of the packaging, including the name of the product, the
 2 green box, which consumers associate with health foods, and the large images of
 3 several particularly healthy vegetables conveys the concrete message to a
 4 reasonable consumer: "You can trust eating this product is not bad for your health.
 5 We use a lot of vegetables in it." Both of these statements Kraft intended
 6 consumers to rely upon and both are false and highly misleading.

7 85. Vegetable Thins contain the manufactured food additive disodium 5'-
 8 guanylate ("DG"). DG is acutely toxic and causes death when fed to mice and rats
 9 in sufficient quantities.⁴² At much lower doses it caused "testicular atrophy," "loss
 10 of righting reflex," "depressed salivary secretion," and changes in stomach acid
 11 composition.⁴³ The fetuses of pregnant mice given DG showed decreases in weight
 12 and increases in skeletal malformation, external malformation, subcutaneous
 13 haematoma, and percent dead offspring compared to controls.⁴⁴

14 86. In quantities used in Vegetable Thins, DG may cause acute gout and
 15 exacerbate symptoms of asthma.

16 87. There are no long term studies on the effects of consuming DG on
 17 human health. Most crackers do not contain DG. The use of DG in Vegetable
 18 Thins is contrary to the impression Kraft deliberately conveys that Vegetable Thins
 19 is a healthy product.

20 88. Vegetable Thins are also extremely high in the food additive

22 ⁴² See Usui, T., et al., *Oral toxicity studies of disodium 5'-ribonucleotide in the rat*,
 23 30 J. Takeda Res. Lab 614-635 (1971); Ichimura, J. & Muroi, K., *Report from Life
 Sciences Laboratories*, Ajinomoto Co., Tokyo, Japan (1973)

24 ⁴³ Shimamoto, K. et al., Pharmacological studies on disodium 5'-Inosinate,
 25 disodium 5'-guanylate and disodium 5'-ribonucleotide, 33 J. Takeda Res. Lab 24-
 37 (1974)

26 ⁴⁴ Fujii, T. & Nishimura, H., *Comparison of teratogenic action of substances
 27 related to purine metabolism in mouse embryos*, 22 Japan. J. Pharmacol. 201-206
 28 (1972).

1 monosodium glutamate (“MSG”). Vegetable Thins contain MSG in two forms:
2 first as pure MSG, and second as “hydrolyzed soy and wheat protein,” which
3 contains a high percentage of MSG.

4 89. MSG, like DG, can cause acute gout and exacerbate symptoms of
5 asthma. Many people also have acute allergic reactions to MSG. Like DG, most
6 crackers do not contain MSG, and its use is deceptive on a product marketed as a
7 health food.

8 90. Vegetable Thins are primarily comprised of highly-refined white
9 flour. This ingredient has a very high glycemic index, meaning that almost
10 immediately upon consumption it is digested into simple sugar and released into
11 the blood stream. High levels of blood sugar are toxic to a number of organs, so the
12 body then releases the hormone insulin as a response to reduce blood sugar to a
13 safe level. When this process is repeated over time, cells that normally react to
14 insulin and absorb excess blood sugar become sensitized and partially resistant to
15 insulin. This partial insulin resistance is variously referred to as metabolic
16 syndrome, insulin resistance syndrome, and pre-diabetes. Type 2 diabetes
17 eventually results.

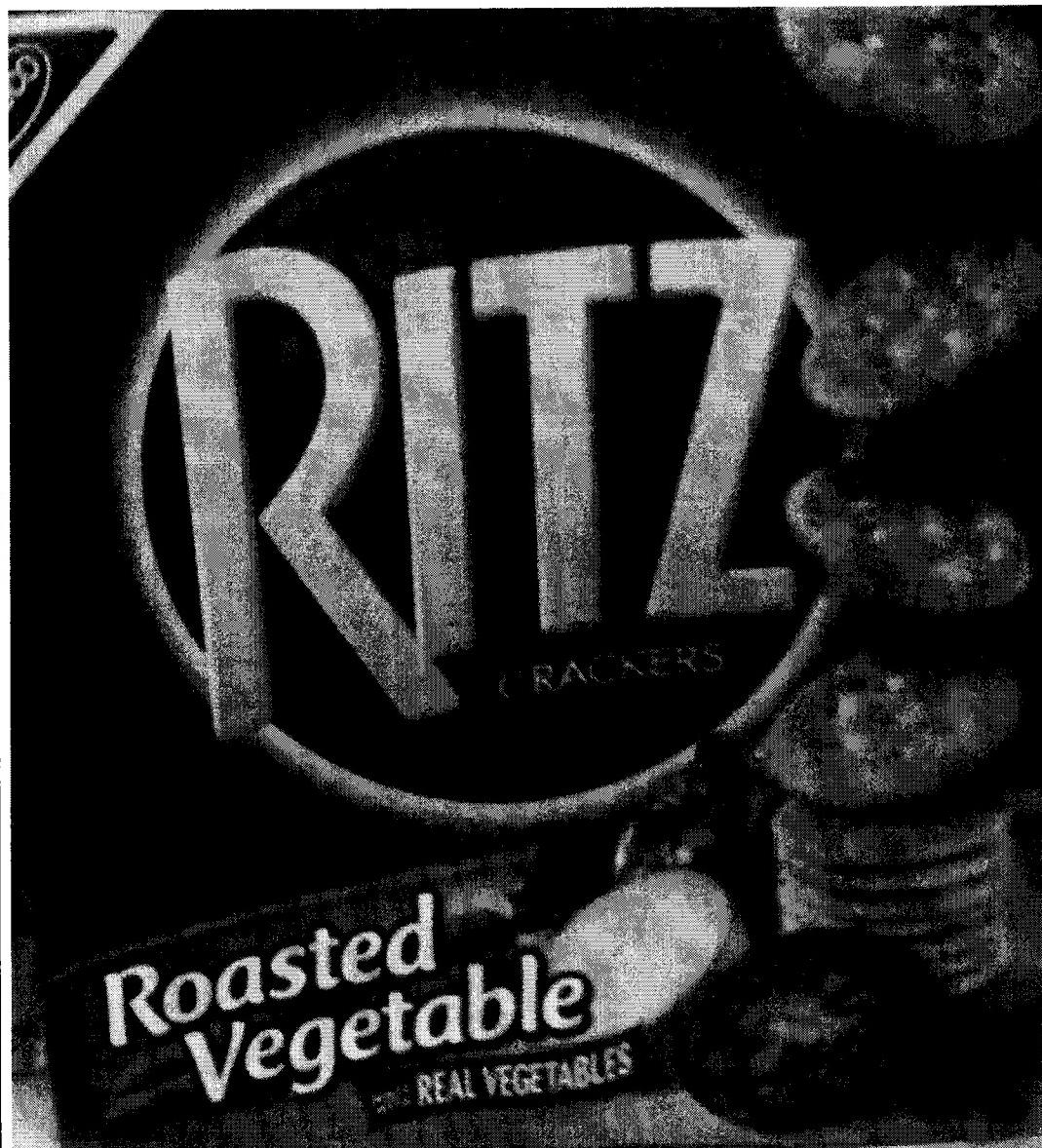
18 91. Vegetable Thins also contain highly-refined added sugar and high
19 fructose corn syrup (“HFCS,”) a highly processed artificial form of sugar. Paired
20 with the product’s unbleached white flour, these substances give Vegetable Thins a
21 high glycemic index that promotes insulin resistance, metabolic dysfunction,
22 diabetes, childhood obesity, and heart disease.

23 92. More immediately, the HFCS and refined simple starch content leads
24 consumers of Vegetable Thins to experience a sugar “high,” during which they will
25 tend to be hyperactive, and a subsequent “crash” or “low,” during which they will
26 be tired, moody, irritable, and even depressed.

27 93. The product’s name, its prominent depiction of vegetables, and the
28 term “Made With Real Vegetables” are highly misleading in light of the refined

1 white flour, added sugar, PHVO, DG, MSG, and HFCS content of Vegetable
2 Thins. While Kraft's labeling suggests the products are healthy and contain real
3 vegetables, in fact, Vegetable Thins are an unhealthy, additive-laden highly-
4 processed, nutritionally empty food that causes and exacerbates many chronic
5 illnesses.

6
7 **Ritz Crackers Roasted Vegetable**



28 94. Misleading "Real Vegetables" Claim: The front label of Ritz

1 Crackers Roasted Vegetable shows images of vegetables and advertises “MADE
 2 WITH REAL VEGETABLES.” This statement is misleading because the product
 3 contains more partially hydrogenated vegetable oil than it does all of the
 4 vegetables pictured on the box.

5 95. Ritz Crackers Roasted Vegetable is primarily comprised of highly-
 6 refined white flour. This ingredient has a very high glycemic index, meaning that
 7 almost immediately upon consumption it is digested into simple sugar and released
 8 into the blood stream. High levels of blood sugar are toxic to a number of organs,
 9 so the body then releases the hormone insulin as a response to reduce blood sugar
 10 to a safe level. When this process is repeated over time, cells that normally react to
 11 insulin and absorb excess blood sugar become sensitized and partially resistant to
 12 insulin. This partial insulin resistance is variously referred to as metabolic
 13 syndrome, insulin resistance syndrome, and pre-diabetes. Type 2 diabetes
 14 eventually results.

15 96. Ritz Crackers Roasted Vegetable also contains highly-refined added
 16 sugar and high fructose corn syrup. Paired with the product’s highly-refined white
 17 flour, these substances give Ritz Crackers Roasted Vegetable a high glycemic
 18 index that promotes insulin resistance, metabolic dysfunction, diabetes, obesity,
 19 and heart disease.

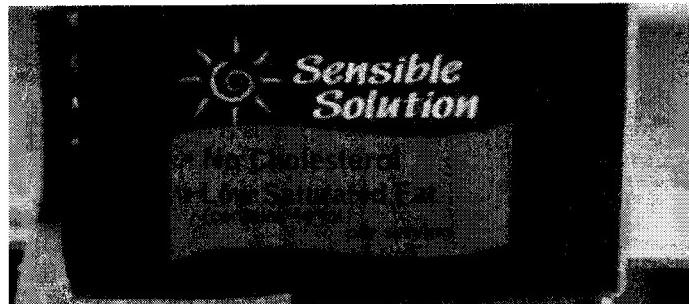
20 97. More immediately, the high sugar, HFCS, and refined simple starch
 21 content leads consumers of Ritz Crackers Roasted Vegetables to experience a
 22 sugar “high,” during which they will tend to be hyperactive, and a subsequent
 23 “crash” or “low,” during which they will be tired, moody, irritable, and even
 24 depressed.

25 98. The product’s name, its prominent depiction of vegetables, and the
 26 term “MADE WITH REAL VEGETABLES” are highly misleading in light of the
 27 refined flour, added sugar, and HFCS content of Ritz Crackers Roasted Vegetable.
 28 While Kraft’s labeling suggests the product is healthy and contains a significant

1 amount of vegetables, in fact, Ritz Crackers Roasted Vegetable are a highly-
2 processed, dangerous, and nutritionally empty food.

3
4 **Ritz Crackers Hint of Salt**





Ritz Crackers Reduced Fat



99. Misleading "Sensible Solution" Claims: Kraft labels Ritz Crackers

1 Hint of Salt and Ritz Crackers Reduced Fat a “Sensible Solution.” This statement,
 2 made beside a listing of cholesterol and saturated fat content, is misleading as they
 3 contains PHVO, which damages heart health far more than dietary cholesterol and
 4 saturated fat. The claim is likewise false because it is not “sensible” for a
 5 reasonable consumer to purchase a cracker with ingredients that will cause heart
 6 disease, cancer, and diabetes.

7 100. “Sensible Solution” is a label Kraft created in 2005, which Kraft uses
 8 on over 700 Kraft products.⁴⁵

9 101. Although Kraft is in the business of making cheap, highly-processed
 10 junk foods, at least 25% of its products meet the criteria Kraft established for itself
 11 when a product is purportedly a “Sensible Solution.” Moreover, products bearing
 12 the “Sensible Solution” label are marketed primarily towards children in the 6-11
 13 age range.

14 102. For example, Kraft markets nine children’s lunches as part of its
 15 “Sensible Solution” program: Lunchables Pepperoni Flavored Sausage Mini Pizza,
 16 Mini Hot Dogs, Maxed Out Extra Cheesy Deep Dish Pizza, Chicken Shake-Ups
 17 (BBQ and Nacho Cheese varieties), Chicken Dunks, Pizza & Treatza, and Extra
 18 Cheesy Pizza.

19 103. These children’s lunches may contain 600 calories, 30% of calories
 20 from fat, 10% of calories from saturated fat and trans fat, and 960mg per serving,
 21 and meet Kraft’s self-established “Sensible Solutions” criteria.⁴⁶

22 104. In sum, Kraft’s “Sensible Solutions” advertisement is part of a highly-
 23 deceptive, self-created program with suspect criteria, designed to make unhealthy,
 24

25 ⁴⁵ Mike Hughlett, “Grocers hope labels whet appetites for healthy fare;
 26 Supermarkets are developing their own nutrition ratings to help consumers who
 27 find themselves confused by the multitude of manufacturers’ claims,” Chicago
 Tribune, March 16, 2008.

28 ⁴⁶ See <http://www.healthylivinganswers.com/archives/3>.

1 highly-processed foods seem healthy, which they are not.

2 105. Ritz Crackers Hint of Salt and Ritz Crackers Reduced Fat are
3 primarily comprised of highly-refined, white flour. This ingredient has a very high
4 glycemic index, meaning that almost immediately upon consumption it is digested
5 into simple sugar and released into the blood stream. High levels of blood sugar are
6 toxic to a number of organs, so the body then releases the hormone insulin as a
7 response to reduce blood sugar to a safe level. When this process is repeated over
8 time, cells that normally react to insulin and absorb excess blood sugar become
9 sensitized and partially resistant to insulin. This partial insulin resistance is
10 variously referred to as metabolic syndrome, insulin resistance syndrome, and pre-
11 diabetes. Type 2 diabetes eventually results.

12 106. Ritz Crackers Hint of Salt and Ritz Crackers Reduced Fat also contain
13 highly-refined added sugar and high fructose corn syrup. Paired with the products'
14 white flour, these substances give Ritz Crackers Hint of Salt and Ritz Crackers
15 Reduced Fat a high glycemic index that promotes insulin resistance, metabolic
16 dysfunction, diabetes, childhood obesity, and heart disease.

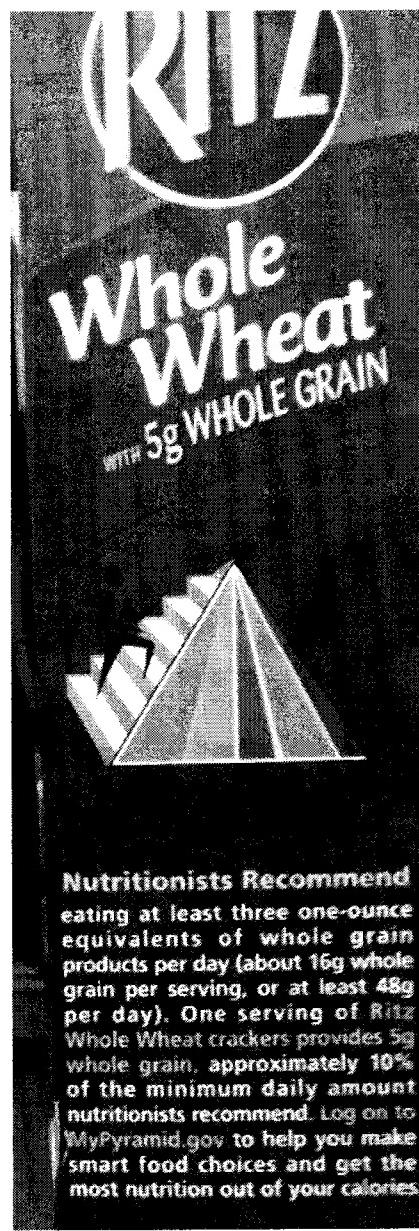
17 107. More immediately, the high sugar, HFCS, and refined simple starch
18 content leads consumers of Ritz Crackers Hint of Salt and Ritz Crackers Reduced
19 Fat to experience a sugar "high," during which they will tend to be hyperactive,
20 and a subsequent "crash" or "low," during which they will be tired, moody,
21 irritable, and even depressed.

22 108. The products' "Sensible Solution" labels are highly misleading in
23 light of the refined flour, added sugar, and HFCS content of Ritz Crackers Hint of
24 Salt and Ritz Crackers Reduced Fat. While Kraft's labeling suggests the products
25 are healthy, in fact, Ritz Crackers Hint of Salt and Ritz Crackers Reduced Fat are
26 unhealthy, highly-processed, nutritionally empty foods which cause and exacerbate
27 many chronic illnesses.

28 //

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2 Ritz Crackers Whole Wheat
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109. **Misleading Packaging:** The side panel of the Ritz Crackers Whole Wheat package states "Nutritionists Recommend," and "STEPS TO A HEALTHIER YOU." These claims are misleading, as the obvious implication is that Ritz Whole Wheat Crackers are healthy and recommended by nutritionists.

110. **Misleading "Whole Wheat" Claim:** Both the product name and the package of Ritz Crackers Whole Wheat suggest it is a whole wheat product. This is

1 not true. Whole wheat products are, by definition, made from wheat produced by
2 grinding or mashing the wheat's whole grain. The word "whole" refers to the fact
3 that all of the grain (bran, germ and endosperm) is used, and nothing is lost in the
4 process of making the flour. This is in contrast to white, refined flours, which
5 contain only endosperm. Although Kraft promotes the product as a "whole wheat"
6 product, Ritz Crackers Whole Wheat are composed primarily of highly-refined
7 white flour.

8 111. Plaintiffs and the public generally are aware that whole wheat
9 products are healthier than products comprised of highly-refined white flour. Ritz
10 Crackers Whole Wheat, however, contain much more refined, enriched flour than
11 whole wheat flour. It is therefore false and misleading to describe Ritz Crackers
12 Whole Wheat as a whole wheat product.

13 **112. False and Misleading “Sensible Solution” Claims:** Kraft labels Ritz
14 Crackers Whole Wheat a “Sensible Solution.” This is false and misleading for this
15 product for the same reasons described above that it is false and misleading in
16 other Ritz varieties.

Original Premium Saltine Crackers



1 **113. Misleading “Sensible Snacking” Claims:** Kraft labels its Original
2 Premium Saltine Crackers “Sensible Snacking.” This statement, made beside a
3 listing of cholesterol and saturated fat content, is misleading as it contains PHVO,
4 which damages heart health far more than dietary cholesterol and saturated fat. The
5 claim is likewise false because it is not “sensible” for a reasonable consumer to
6 purchase a cracker with ingredients that will cause heart disease, cancer, and
7 diabetes.

8 114. Premium Saltine Crackers are primarily comprised of highly-refined,
9 white flour. This ingredient has a very high glycemic index, meaning that almost
10 immediately upon consumption it is digested into simple sugar and released into
11 the blood stream. High levels of blood sugar are toxic to a number of organs, so the
12 body then releases the hormone insulin as a response to lower blood sugar. When
13 this process is repeated over time, cells that normally react to insulin and absorb
14 excess blood sugar become sensitized and partially resistant to insulin. This partial
15 insulin resistance is variously referred to as metabolic syndrome, insulin resistance
16 syndrome, and pre-diabetes. Type 2 diabetes eventually results.

17 115. Premium Saltine Crackers also contain HFCS, a highly-refined added
18 sugar. Paired with the product’s unbleached white flour, these substances give
19 Premium Saltine Crackers a high glycemic index that promotes insulin resistance,
20 metabolic dysfunction, diabetes, childhood obesity, and heart disease.

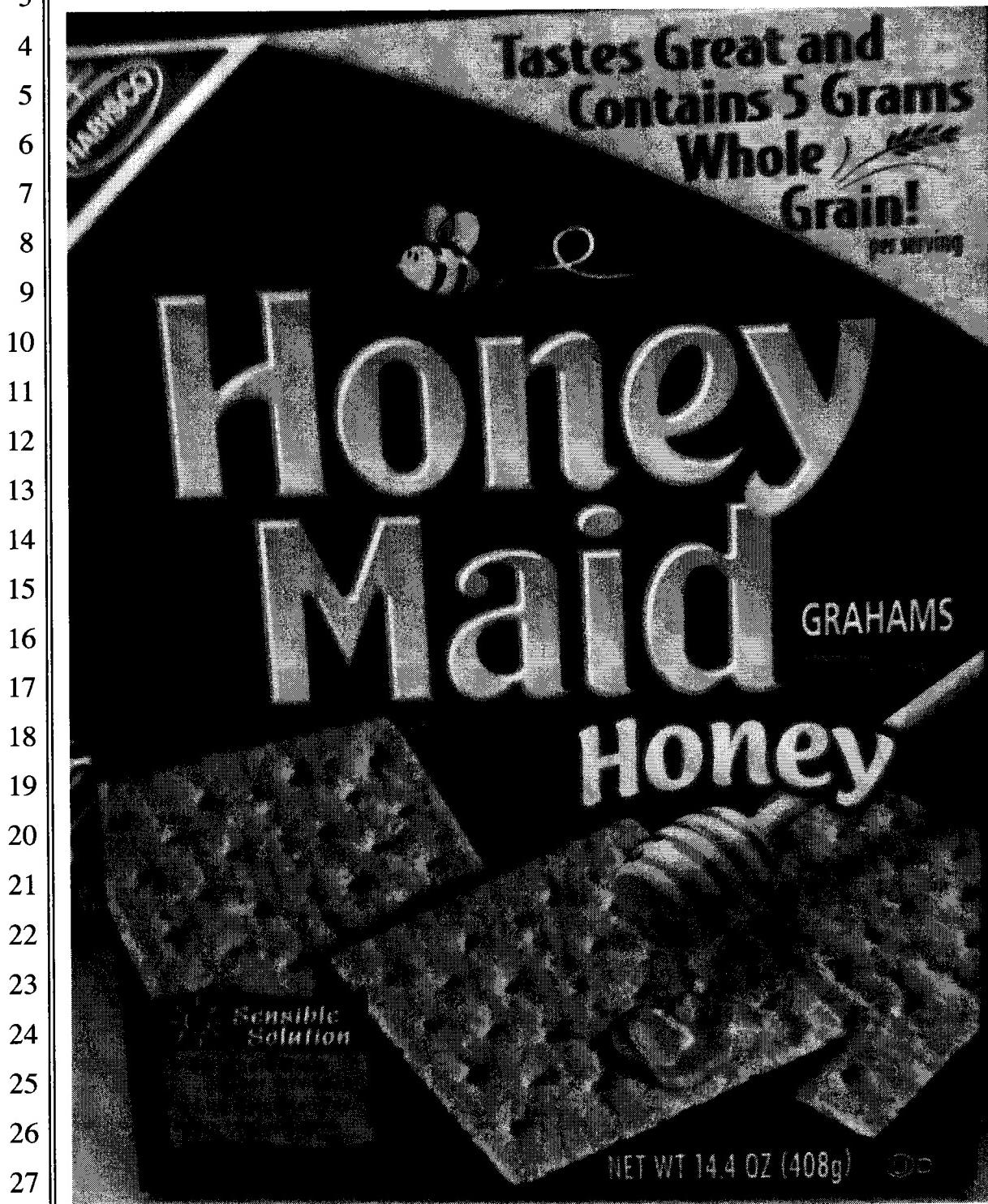
21 116. More immediately, the high sugar, HFCS, and refined simple starch
22 content leads children who consume Premium Saltine Crackers to experience a
23 sugar “high,” during which they will tend to be hyperactive, and a subsequent
24 “crash” or “low,” during which they will be tired, moody, irritable, and even
25 depressed.

26 117. The product’s “Sensible Snacking” label is highly misleading in light
27 of the refined flour, added sugar, and HFCS content of Premium Saltine Crackers.
28 While Kraft’s labeling suggests the product is healthy, in fact, Premium Saltine

1 Crackers are a highly-processed, nutritionally empty food.

2

3 **Honey Maid Grahams**



Honey Maid Grahams "Low Fat"



1 118. **Misleading “Graham” Claims:** Both the product name and the
2 package of Honey Maid Grahams claims to be graham product. This is not true.
3 Graham products, such as graham cookies, crackers, and pie crusts, are by
4 definition made from graham flour. Graham flour, invented in the United States in
5 1824, is a healthier alternative for baking for use instead of more heavily refined
6 white flour. Graham flour has several very substantial nutritional advantages over
7 white flour. Graham flour utilizes the whole wheat grain, which means that the
8 bran and germ are not removed from the wheat kernel as in white flour. This
9 results in a lower percentage of nutritionally empty starch and a much higher
10 amount of fiber and protein compared to white flour. Graham flour also differs
11 from white flour in that it is coarser and less refined. These two differences mean
12 baked goods with graham flour are substantially better for health than white flour
13 products.

14 119. Specifically, the highly-refined white flour that is the major ingredient
15 in Honey Maid Grahams has a very high glycemic index, meaning that almost
16 immediately upon consumption it is digested into simple sugar and released into
17 the blood stream. High levels of blood sugar are toxic to a number of organs, so the
18 body then releases the hormone insulin as a response to reduce blood sugar to a
19 sage level. When this process is repeated over time, cells that normally react to
20 insulin and absorb excess blood sugar become sensitized and partially resistant to
21 insulin. This partial insulin resistance is variously referred to as metabolic
22 syndrome, insulin resistance syndrome, and pre-diabetes. Type 2 diabetes
23 eventually results. Graham flour products, because they are less refined and
24 contain fiber and protein, are more slowly digested and do not cause the sudden
25 spike in blood glucose and insulin levels.

26 120. Besides their mild relative effects on blood sugar and metabolic
27 health, graham flour based products are also healthier because of their higher fiber
28 content. Fiber is important to aid digestion and a lack of fiber in the diet is linked

1 with cancer in the digestive tract.⁴⁷ Products with natural fiber are also subjectively
 2 more satisfying and "filling" and less likely to be consumed in excess.⁴⁸ A low
 3 fiber diet in children is linked to obesity, constipation,⁴⁹ and irritated mood.⁵⁰

4 121. Plaintiffs and the public generally are aware that graham products are
 5 healthier than white flour products. Honey Maid Grahams, however, contain more
 6 than three times the amount of white flour as graham flour. It is therefore false to
 7 describe them a "Grahams" or "graham snacks." Graham products are made
 8 entirely from graham flour.

9 122. **False and Misleading "Honey" Claims:** Honey Maid's product
 10 name, the prominent second use of the word "Honey" directly below it, and the
 11 prominent image of flowing honey, both individually and even more so
 12 collectively, convey the message that Honey Maid Graham Crackers are primarily
 13 sweetened and flavored with honey. This is false. Honey Maid Grahams in fact
 14 contains nearly no honey. Honey Maid in fact contains more PHVO and high
 15 fructose corn syrup than honey.

16 123. Consumers value products sweetened with honey because it is a
 17 natural ingredient, unlike HFCS, and because it shown to have anti-bacterial, anti-
 18 viral, anti-oxidant, and anti-fungal properties. Honey possess six species of
 19 therapeutic lactobacilli and four species of bifidobacteria. Moreover, some
 20 phytonutrients found in honey have been shown to possess cancer-preventing and

21 ⁴⁷ Mayo Clinic, "Colon Cancer: Risk Factors," Aug. 15, 2009, *available at:*
 22 <http://www.mayoclinic.com/health/colon-cancer/DS00035/DSECTION=risk-factors>.

23 ⁴⁸ *Id.*, "Dietary Fiber: Essential for a healthy diet," Nov. 19, 2009, *available at:*
 24 <http://www.mayoclinic.com/health/fiber/NU00033>.

25 ⁴⁹ *Id.*, "Constipation in Children: Causes," May 2, 2009, *available at:*
 26 <http://www.mayoclinic.com/health/constipation-in-children/DS01138/DSECTION=causes>.

27 ⁵⁰ *Id.*, "Constipation in Children: Symptoms," May 2, 2009, *available at:*
 28 <http://www.mayoclinic.com/health/constipation-in-children/DS01138/DSECTION=symptoms>.

1 anti-tumor properties, including caffeic acid methyl caffeoate, phenylethyl caffeoate,
2 and phenylethyl dimethylcaffeoate.

3 124. Honey also promotes better blood sugar control. Honey is an ideal
4 fuel for the liver because it contains a nearly 1:1 ratio of fructose to glucose.
5 Fructose “unlocks” the enzyme from the liver cell’s nucleus that is necessary for
6 the incorporation of glucose into glycogen. An adequate glycogen store in the liver
7 is essential to supply the brain with fuel. Experimental evidence indicates
8 consumption of honey may improve blood sugar control and insulin sensitivity
9 compared to other sweeteners, including the HFCS Kraft uses in Honey Maid
10 Graham Crackers.

11 125. **False and Misleading “Sensible Solution” Claim:** Kraft labels
12 Honey Maid Grahams a “Sensible Solution.” This statement, made beside a listing
13 of cholesterol and saturated fat content, is misleading because Honey Maid
14 Grahams contains PHVO, which damages heart health far more than dietary
15 cholesterol and saturated fat. The claim is likewise false because it is not
16 “sensible” for a reasonable consumer to purchase a cracker with ingredients that
17 will cause heart disease, cancer, and diabetes, and for reasons further described
18 above in the Ritz Cracker section.

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[continued on next page]

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Nabisco Ginger Snaps



126. Misleading “Ginger” and “Molasses” Claims: Ginger Snaps claim to be “Made with Real Ginger & Molasses.” The product’s name further implies that it is made with ginger. The implication for a reasonable consumer is that Ginger Snaps are flavored and sweetened with natural substances, and are therefore healthy. This is not true. Ginger Snaps contain more added HFCS than molasses, and contain more PHVO than ginger.

127. Ginger is effective in alleviating symptoms of gastrointestinal distress and possesses numerous therapeutic properties including antioxidant effects, the ability to inhibit the formation of inflammatory compounds, and direct anti-inflammatory effects. It may also inhibit the growth of human colorectal cancer cells, and induces cell death in ovarian cancer cells. Molasses contains more vitamins, minerals and trace elements (iron, potassium, calcium and magnesium)

than in other sweeteners, like the highly-refined HFCS in Kraft's Ginger Snaps.

2 128. By misleadingly labeling the Ginger Snaps as "Made with Real
3 Ginger & Molasses," Kraft implies that the Ginger Snaps provide the benefits of
4 ginger and molasses, rather than the detriments of highly-processed, nutritionally
5 empty sweeteners like added sugar, and other toxic substances like PHVO.

6 **129. False and Misleading “Sensible Solution” Claims:** This claim is
7 false and misleading for all the reasons previously described in other products,
8 which are hereby incorporated by reference.

RELIANCE AND INJURY

10 130. When purchasing the Kraft PHVO Products, Plaintiffs were seeking,
11 for themselves and their families, products of particular qualities, including
12 products that were free from artificial *trans* fat, products that did not negatively
13 affect blood cholesterol levels, and products made with natural, healthy
14 ingredients.

131. Plaintiffs read and relied on, for each purchase of the Kraft PHVO
Products made during the Class Period, Kraft's misleading "Graham,"
"Wholesome," "support kids' growth and development," "Smart Choices," "Made
With Real Vegetables" (and depictions of vegetables), "Sensible Solution,"
"Whole Wheat," "Sensible Snacking," "Honey," and "Made with Real Ginger &
Molasses" health claims.

21 132. Plaintiffs purchased the Kraft PHVO Products believing they had the
22 qualities Plaintiffs sought based on their deceptive labeling, but the products were
23 actually unsatisfactory to Plaintiffs for the reasons described herein.

24 133. The Kraft PHVO Products cost more than similar products without
25 misleading labeling, and would have cost less absent the false and misleading
26 statements.

27 ||| 134. Plaintiffs paid more for the Kraft PHVO products, and would have

1 been willing to pay less, if they had not been mislead by the false and misleading
 2 labeling complained of herein. Plaintiffs would not have purchased the Kraft
 3 PHVO Products at the prices they did absent these advertisements.

4 135. For these reasons, the Kraft PHVO Products were worth less than
 5 what Plaintiffs paid for them.

6 136. Plaintiffs purchased Kraft's PHVO Products instead of competing
 7 products based on the false statements and misrepresentations described herein.

8 137. Instead of receiving products that have the advantages inherent in
 9 being free of artificial *trans* fat and comprised of natural, healthy ingredients, they
 10 received products that contained artificial *trans* fat and were comprised of highly-
 11 refined, highly-processed, and nutritionally empty ingredients.

12 138. Plaintiffs lost money as a result of Kraft's deception in that Plaintiffs
 13 did not receive what they had paid for.

14 139. Plaintiffs altered their position to their detriment and suffered
 15 damages in an amount equal to the amount they paid for the Kraft PHVO Products.

DELAYED DISCOVERY

17 140. Plaintiffs did not discover that Kraft's labeling of the Kraft PHVO
 18 Products was false, deceptive, or misleading until late January 2010.

19 141. While Plaintiffs knew that consumption of artificial *trans* fat was
 20 generally worse than other types of dietary fat intake, they were unaware of the
 21 grave health consequences of consuming products like the Kraft PHVO Products
 22 before that time, or the connection between the consumption of such artificial *trans*
 23 fat and disease such as coronary heart disease, type 2 diabetes, cancer, and death.
 24 Plaintiffs were also unaware that the consumption of artificial *trans* fat affects
 25 blood cholesterol levels far more than dietary cholesterol or saturated fat.

26 142. Plaintiffs are not nutritionists, food experts, or food scientists; they are
 27 lay consumers who did not possess the specialized knowledge Kraft had which

otherwise would have enabled them to associate partially hydrogenated oil with artificial *trans* fat, and artificial *trans* fat with disease.

3 143. Plaintiffs, in the exercise of reasonable diligence, could not have
4 discovered Kraft's deceptive practices earlier because, like nearly all consumers,
5 they do not read or have access to scholarly publications such as The Journal of
6 Nutrition,⁵¹ The European Journal of Clinical Nutrition,⁵² and The New England
7 Journal of Medicine.⁵³

8 144. Further, even today knowledge of the extensive use of artificial *trans*
9 fats, including that they necessarily exist where partially hydrogenated oil is used
10 as an ingredient in a food product, is generally unknown to the average consumer.

CLASS ACTION ALLEGATIONS

145. Plaintiffs bring this action on behalf of themselves and the following Classes in accordance with Rule 23 of the Federal Rules of Civil Procedure:

146. The Classes are defined as:

Restitution and Damages Class:

All persons (excluding officers, directors, and employees of Kraft) who purchased, on or after January 1, 2000, one or more of the Kraft PHVO Products in the United States for their own use rather than resale or distribution.

⁵¹ Peter M. Clifton *et al.*, *Trans Fatty Acids In Adipose Tissue And The Food Supply Are Associated With Myocardial Infarction*. 134 J. of Nutrition 874, 874-79 (2004).

⁵² A. Tavani *et al.* Margarine intake and risk of nonfatal acute myocardial infarction in Italian women. Eur. J. Clin. Nutr. 51: 30–32 (1997) (estimating a 50% greater risk of heart attack in women with high consumption of margarine, an association “independent of body mass index, history of hypertension and hyperlipidemia.”)

²⁷ 53 “10 to 19 percent of CHD events in the United States could be averted by
²⁸ reducing the intake of trans fat.” 354 New Eng. J. Med. at 1611.

1 Injunctive Relief Class:

2 All persons (excluding officers, directors, and employees of Kraft)
3 who commonly purchase or are in the market for one or more Kraft
4 PHVO Products in the United States for their own use rather than
5 resale or distribution.

6 147. Questions of law and fact common to Plaintiffs and the Classes
7 include:

- 8 a. Whether Kraft contributed to, committed, and/or is
9 responsible for the conduct alleged herein;
- 10 b. Whether Kraft's conduct constitutes the violations of law
11 alleged herein;
- 12 c. Whether Kraft acted willfully, recklessly, negligently, or with
13 gross negligence in the violations of law alleged herein; and
- 14 d. Whether Class members are entitled to restitution; and
- 15 e. Whether Class Members are entitled to injunctive relief.

16 148. By purchasing and/or using the Kraft PHVO Products, all Class
17 members were subjected to the same wrongful conduct.

18 149. Absent these material deceptions, misstatements, and omissions,
19 Plaintiffs and other Class members would not have purchased the Kraft PHVO
20 Products.

21 150. Plaintiffs' claims are typical of the Classes' claims. Plaintiffs will
22 fairly and adequately protect the interests of the Classes, have no interests that are
23 incompatible with the interests of the Classes, and have retained counsel competent
24 and experienced in class litigation.

25 151. The Classes are sufficiently numerous, as they each include hundreds
26 of thousands of individuals who purchased the Kraft PHVO Products throughout
27 the United States.

28 152. Class representation is superior to other options for the resolution of

the controversy. The relief sought for each Class member is small. Absent the availability of class action procedures, it would be infeasible for Class members to redress the wrongs done to them.

4 153. Kraft has acted on grounds applicable to the Classes, thereby making
5 appropriate final injunctive relief or declaratory relief concerning the Classes as a
6 whole.

7 154. Questions of law and fact common to the Classes predominate over
8 any questions affecting only individual members.

FIRST CAUSE OF ACTION

Violations of the California Unfair Competition Law,

Bus. & Prof. Code §§ 17200 *et seq.*

(Unlawful)

13 155. Plaintiffs reallege and incorporate the allegations elsewhere in the
14 Complaint as if set forth in full herein.

15 156. Bus. & Prof. Code § 17200 prohibits any “unlawful, unfair or
16 fraudulent business act or practice.”

17 157. The acts, omissions, misrepresentations, practices, and non-
18 disclosures of Kraft as alleged herein constitute “unlawful” business acts and
19 practices in that Kraft’s conduct violates the False Advertising Law and the
20 Consumer Legal Remedies Act.

21 158. Kraft's conduct is further "unlawful" because it violates the Federal
22 Food, Drug, and Cosmetic Act ("FFDCA") at (1) 21 U.S.C. § 343(a), which deems
23 food misbranded when the label contains a statement that is "false or misleading in
24 any particular;" and (2) 21 C.F.R. § 101.13(i)(3), which bars nutrient content
25 claims voluntarily placed on the front of a product label that are "false or
26 misleading in any respect." Kraft further violates 21 C.F.R. 1.21, prohibiting true
27 statements about ingredients that are misleading in light of the presence of other
28 ingredients.

1 159. Kraft's conduct likewise violates The California Sherman Food,
2 Drug, and Cosmetic Law ("Sherman Law"), at (1) Health & Safety Code §
3 110660, which deems food products "misbranded" if their labeling is "false or
4 misleading in any particular," and (2) Health & Safety Code § 110670, which bars
5 nutrient content claims voluntarily placed on the front of a product label that fail to
6 comply with the federal regulation for nutrient content claims (i.e., "may not be
7 false or misleading in any respect").

8 160. All of the challenged labeling statements made by Kraft by violating
9 the FFDCA and the Sherman Law, further violate the “unlawful” prong of the
10 UCL.

11 161. Kraft leveraged its deception to induce Plaintiffs and members of the
12 Classes to purchase products that were of lesser value and quality than advertised.

13 162. Plaintiffs suffered injury in fact and lost money or property as a result
14 of Kraft's deceptive advertising: they were denied the benefit of the bargain when
15 they decided to purchase the Kraft PHVO Products over competitor products,
16 which are less expensive and/or contain no artificial trans fat. Had Plaintiffs been
17 aware of Kraft's false and misleading advertising tactics, they would have paid less
18 than what they did for the Kraft PHVO Products or not have purchased them at all.

19 163. In accordance with Bus. & Prof. Code § 17203, Plaintiffs seek an
20 order enjoining Kraft from continuing to conduct business through unlawful,
21 unfair, and/or fraudulent acts and practices and to commence a corrective
22 advertising campaign.

23 164. Plaintiffs also seek an order for the disgorgement and restitution of
24 all monies from the sale of the Kraft PHVO Products, which were acquired
25 through acts of unlawful, unfair, and/or fraudulent competition.

SECOND CAUSE OF ACTION

Violations of the California Unfair Competition Law

Bus. & Prof. Code §§ 17200 *et seq.*

(Unfair and Fraudulent)

2 165. Plaintiffs reallege and incorporate the allegations elsewhere in the
3 Complaint as if set forth in full herein.

4 166. Bus. & Prof. Code § 17200 prohibits any “unlawful, unfair or
5 fraudulent business act or practice.”

6 167. The acts, omissions, misrepresentations, practices, and non-
7 disclosures of Kraft as alleged herein constitute “unfair” business acts and
8 practices because Kraft’s conduct is immoral, unscrupulous, and offends public
9 policy. Further, the gravity of Kraft’s conduct outweighs any conceivable benefit
10 of such conduct.

11 168. The acts, omissions, misrepresentations, practices, and non-
12 disclosures of Kraft as alleged herein constitute “fraudulent” business acts and
13 practices because Kraft’s conduct has a tendency to deceive both the Class
14 members and the general public.

15 169. In accordance with Bus. & Prof. Code § 17203, Plaintiffs seek an
16 order enjoining Kraft from continuing to conduct business through unlawful,
17 unfair, and/or fraudulent acts and practices and to commence a corrective
18 advertising campaign.

19 170. Plaintiffs also seek an order for the disgorgement and restitution of
20 all monies from the sale of the Kraft PHVO Products, which were acquired
21 through acts of unlawful, unfair, and/or fraudulent competition.

THIRD CAUSE OF ACTION

Violations of the California False Advertising Law, Bus. & Prof. Code § 17500 *et seq.*

25 171. Plaintiffs reallege and incorporate the allegations elsewhere in the
26 Complaint as if set forth in full herein.

172. In violation of Bus. & Prof. Code § 17500 *et seq.*, the advertisements,
labeling, policies, acts, and practices described herein were designed to, and did,

1 result in the purchase and use of the products without the knowledge that the Kraft
2 PHVO Products contained toxic artificial *trans* fat.

3 173. Kraft either knew or reasonably should have known that the labels on
4 the Kraft PHVO Products were untrue and/or misleading.

174. As a result, Plaintiffs, the Classes, and the general public are entitled
to injunctive and equitable relief, restitution, and an order for the disgorgement of
the funds by which Kraft was unjustly enriched.

FOURTH CAUSE OF ACTION

Violations of the Consumer Legal Remedies Act,

Civ. Code § 1750 *et seq.*

(Injunctive Relief and Restitution)

12 175. Plaintiffs reallege and incorporate the allegations elsewhere in the
13 Complaint as if set forth in full herein.

14 176. The CLRA prohibits deceptive practices in connection with the
15 conduct of a business that provides goods, property, or services primarily for
16 personal, family, or household purposes.

17 177. Kraft's policies, acts, and practices were designed to, and did, result in
18 the purchase and use of the products primarily for personal, family, or household
19 purposes, and violated and continue to violate the following sections of the CLRA:

- a. § 1770(a)(5): representing that goods have characteristics, uses, or benefits which they do not have.
 - b. § 1770(a)(7): representing that goods are of a particular standard, quality, or grade if they are of another.
 - c. § 1770(a)(9): advertising goods with intent not to sell them as advertised.
 - d. § 1770(a)(16): representing the subject of a transaction has been supplied in accordance with a previous representation when it has not.

178. As a result, Plaintiffs and the Classes have suffered irreparable harm

1 and are entitled to injunctive relief and restitution.

2 179. In compliance with Civ. Code § 1782, Plaintiffs have sent written
3 notice to Kraft of their claims.

4 **FIFTH CAUSE OF ACTION**

5 **Violations of the Consumer Legal Remedies Act,**

6 **Civ. Code § 1750 *et seq.***

7 **(Actual Damages and Punitive Damages)**

8 180. Plaintiffs reallege and incorporate the allegations elsewhere in the
9 Complaint as if set forth in full herein.

10 181. The CLRA prohibits deceptive practices in connection with the
11 conduct of a business that provides goods, property, or services primarily for
12 personal, family, or household purposes.

13 182. Kraft's policies, acts, and practices were designed to, and did, result in
14 the purchase and use of the products primarily for personal, family, or household
15 purposes, and violated and continue to violate the following sections of the CLRA:

16 e. § 1770(a)(5): representing that goods have characteristics,
17 uses, or benefits which they do not have.

18 f. § 1770(a)(7): representing that goods are of a particular
19 standard, quality, or grade if they are of another.

20 g. § 1770(a)(9): advertising goods with intent not to sell them as
21 advertised.

22 h. § 1770(a)(16): representing the subject of a transaction has
23 been supplied in accordance with a previous representation
when it has not.

24 183. In compliance with Civ. Code § 1782, Plaintiffs have sent written
25 notice to Kraft of their claims. Kraft received this notice on February 16, 2010 and
26 failed to respond to Plaintiffs' demand and rectify their conduct on behalf of the
27 Plaintiff Classes within 30 days of receiving Plaintiffs' § 1782 notice.

28 184. Kraft's failure to respond is ineffective to avoid the range of remedies

1 available to Plaintiffs and the Classes under the CLRA. Kraft failed to (1) rectify
2 its conduct and (2) offer to compensate Plaintiffs and the Classes for out-of-pocket
3 expenses, interest, and damages incurred as a result of purchasing the Kraft PHVO
4 Products, which would not have been purchased had Kraft disclosed their actual
5 *trans* fat content and pose serious health consequences for those who consume
6 them when used as intended.

7 185. Kraft's conduct is immoral, unscrupulous, and offends public policy.
8 Further, the gravity of Kraft's conduct outweighs any conceivable benefit of such
9 conduct.

10 186. In accordance with Civ. Code §1780(a)(2), Plaintiffs and the Classes
11 seek and are entitled to an award of actual damages, punitive damages, costs,
12 attorneys fees, and any other relief deemed necessary, appropriate, and proper by
13 the court pursuant to Civ. Code § 1780.

PRAYER FOR RELIEF

15 WHEREFORE, Plaintiffs, on behalf of themselves, all others similarly
16 situated, and the general public, pray for judgment and relief against Defendants as
17 follows:

- 18 A. Declaring this action to be a proper class action.

19 B. An order enjoining Kraft from:

20 a. marketing the Kraft PHVO Products using the word
21 “sensible” when they contain PHVO;

22 b. marketing the Kraft PHVO Products using the word
23 “wholesome” when they contain PHVO;

24 c. use of any other misleading health claim on the products
described herein.

25 C. An order compelling Kraft to conduct a corrective advertising

26 campaign the public of its previous false and misleading statements and omissions.

27 D. An order requiring Kraft to disgorge all monies, revenues, and profits

1 obtained by means of any wrongful act or practice.

2 E. An order compelling Kraft to destroy all misleading and deceptive
3 advertising materials and products as provided by 15 U.S.C. § 1118.

4 F. An order requiring Kraft to restore all funds acquired by means of any
5 act or practice declared by this Court to be an unlawful, unfair, or fraudulent
6 business act or practice, untrue or misleading advertising, or a violation of the
7 CLRA, plus pre-and post-judgment interest thereon.

8 G. Actual and punitive damages under the CLRA.

9 H. Costs, expenses, and reasonable attorneys' fees.

10 I. Any other and further relief the Court deems necessary, just, or
11 proper.

12 **JURY DEMAND**

13 Plaintiffs demand a trial by jury on all causes of action so triable.

14 DATED: September 16, 2010

Respectfully Submitted,

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16


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